1-8-01

(1)

No. 00-1169

In the

Supreme Court of the United States

BETTY BOYKIN, Petitioner

-v-

ENTERGY OPERATIONS, INC., Respondent

On Petition For Writ Of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the United States Court of Appeals was incorrect in upholding a summary judgment.

2. Whether the United States Court of Appeals violated petitioner's constitutional rights by denying trial by jury as provided in the seventh amendment to the United States Constitution.

PARTIES TO THE PROCEEDINGS

Petitioners

Betty Boykin

Respondents

Entergy Operations, Inc.

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OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit issued its unpublished opinion affirming the United States District Court for the Western District of Mississippi upon Betty Boykin's case (*Boykin v. Entergy, Operations, Inc.*). The United States District Court for the District of Western Mississippi ordered entry of the final judgment in Boykin v. Entergy, Inc. on March 2, 2000.

JURISDICTION

These proceedings are instituted and the jurisdiction of this Court is invoked pursuant to 28 U. S. C. §§ 1331, 1367, 2201, and 2202, and 42 U.S.C. §§ 1981, 1988, 2000e, et. seq., and 12101, et. seq. As an appeal from a final judgment in the United States District Court for the Southern District of Mississippi, Western Division. Notice of Appeal was timely filed in accordance with Rule 4(b) of the Federal Rules of Appellate Procedure.

The United States District Court issued its summary judgment on March 2, 2000.

The judgment of the district court in all respects was affirmed by the United States Court of Appeals for the Fifth Circuit on October 11, 2000.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 USC § 2000E
§ 2000E Definitions

Federal Rule of Civil Procedure
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STATEMENT OF THE CASE

This case (5:99 cv60BN) began February 28, 1998 as 5:98cv60Brs, as a potential class action lawsuit as a result of racial discrimination and harassment committed by Entergy Operations, Inc. against the African Americans under its employment and control.

The complainant representing the victims and others similarly situated were William Boykin, Janice Gray, Betty Boykin, Ellen Watts, Greateal Green, Marie Hayes, Bessie Washington and Tremecha Rankins. The judge was David Bramlette, Appellant's Attorney Carol Rhodes, defense EOI.

On June 15, 1998, during a case management conference, Judge James Sumner told the Appellants and their counsel that he was not going to approve or certify this suit as a class. And if it was pursued, he was going to throw the entire suit out of court, without a chance for individual claims after the decision. At the same time, actually a month prior May 15, 1998, a ruling came down from the fifth circuit discouraging a class action lawsuit. The decision by the 5th circuit on the lawsuit Allison v. citgo Petroleum Corp stated in affect that a corporation could not be fined for punitive damages in a class action lawsuit, but only for promotions and back pay. This ruling was strangely limited to class action racial discrimination lawsuits and only applied to proceedings in the fifth circuit.

What this effectively did was to discourage any counsel from pursuing a class action lawsuit of this type because of questionable monetary gains by a law firm.

In order to retain Attorney Rhodes, a notice was sent to Judge David Bramlette on July 13, 1998 to withdraw application in effect for a class action lawsuit against EOI. Ten days later July 23, 1998, Judge Bramlette recused himself from this trial under 28 U.S.C. 455; six months after the lawsuit was filed.

Shortly after his recusal, Judge Bramlette was accused of conflict of interest involving another complainant in another case against defendant, reference judicial misconduct complaint 99-05-372-0149, 5th Cir. of App. Docket 00-60046. (Boykin v. Entergy)

On August 11, 1998, Judge William Barbour replaced Judge David Bramlette as the residing judge and issued an order for the eight cases to resume as individual district cases.

The cases were divided into separate cases. The Appellee, through the courts, completely separated the Appellants as a commonality of complaint, and then through the court's approval, treated them as one when it was to the advantage of the Appellees. This was done on March 15, 1999. There was a motion to sever and it was granted by the district court. The clerk of court was directed by Judge Barbour to assign each of the "related" cases an individual number.

It should be noted that earlier Judge James Sumner categorically in conversation stated, these cases were dissimilar and could not qualify as a class. Yet a year later, they are related cases. The cases that survived the manipulation of the district court and EOI are William Boykin v. EOI CA 5:99Cv29BN, Betty Boykin v. EOI CA 5:99 CV 60 Bn, Bessie Washington v. EOI CA 5:99 Cv61 Bn, Janice Gray v. EOI CA 5:99 CV62 Bn, Ellen Watts v. EOI CA 5:99 CV63 Bn, Marie Hayes v. EOI CA 5:99 CV64 Bn were dismissed on the same day for the same reasons based on one affidavit from a company EOI official.

This dismissal was performed by Judge William Barbour despite the facts and overwhelming evidence and depositions to the contrary.

Betty Boykin, Complainant in CA 5:99 CV 60 BN, Appellant in 00-60346, is in this Court because there has been a serious act of injustice. The district court chose to rule for a dismissal and ignore all evidence and depositions presented. This Dismissal of Claims was ordered and signed by Judge William Barbour on March 2, 2000.

The appellate court ruled against the appellant/petitioner and affirmed the lower court's decision.

Petitioner strongly disagrees. A review of this judgment by the 5th Circuit of Appeals is sought.

A proof of service is sent to Defendant's counsel, Wise Carter Caraway Child

ARGUMENT FOR GRANTING WRIT

A United States Court of Appeals has entered a decision in conflict with the decisions of other United States Court of Appeals on the same important matter.

The United States Court of Appeals has decided an important question of law that is in conflict with standing federal and constitutional law.

The Fifth Circuit Court of Appeals is erroneous in its affirming the District Court's decision. Its decision is in conflict with the majority of the circuit courts and in direct conflict with the United States Constitution.

ARGUMENT

I

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS WAS INCORRECT IN UPHOLDING SUMMARY JUDGMENT.

The Court found that the Appellant established a prima facie case of racial discrimination regarding her promotion claim [Opinion, p. 9]. The Court also found that the Appellee articulated two nondiscriminatory reasons for not promoting plaintiff - (1) the white women who were promoted were more qualified, and (2) they were known to be compatible with the person they would be working for. However, there are record facts which, if believed by the ultimate trier of fact[1], strongly dispute the truthfulness of the appellee's reasons proffered for not promoting appellant. Those facts also show that the appellee has given inconsistent testimony on the proffered reasons.

White employees which, at least, include Karen Rucker (9 years at EOI Grand Gulf plant, G.E.D), Bobby Calcote (13 years at EOI Grand Gulf plant, G.E.D.), and Deborah Baker (5 years at EOI Grand Gulf plant, High School Diploma) were, at different times of their career, promoted ahead of Appellant (20 years at EOI Grand Gulf plant, Secretarial Science Degree). Appellant had more seniority, experience, education and tenure in the classification of clerk, a position that all subject employees held at one time and of which Karen Rucker, Bobby Calcote, Deborah Baker were promoted to more desirable positions ahead of Appellant.

Petitioner was correct in her attack of Rucker not having a high school diploma. This is a prerequisite to employment at EOI. Even if she possesses an equivalent high school degree (GED), it is less than the degree Boykin possesses. EOI cites Rucker's ability to speak foreign languages. This is a non-factor. On the rare occasions that an interpreter is needed, the visiting company brings an interpreter.

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[1]In deciding a summary judgment motion in an employment discrimination case, "a judge may not assess the credibility of witnesses." Stewart v. RCA Corp., 790 F. 2d 624, 628 (7th Cir. 1986). The judge "has no similar right to decide which evidentiary materials are the best ones for resolving a disputed question of fact; the judge may not resolve the dispute at all."

Boykin possesses. EOI cites Rucker's ability to speak foreign languages. This is a non-factor. On the rare occasions that an interpreter is needed, the visiting company brings an interpreter.

The Appellant presented evidence that EOI discriminated against her by Karen Rucker's testimony which basically admitted that her qualifications were much lower than the Appellant. Cooley's affidavit was empty when it came to comparing qualifications. He simply stated that Rucker possessed qualities such as being able to greet people, represent the company well, etc. All these traits are fine. Boykin also possesses these qualities and also has the added quality of being more qualified for the position than Rucker. Petitioner's expert report and interrogatory responses all well maintain the position that she was discriminated against. The defendant's EEO 1 report gave very credible evidence to the discrimination experienced by Boykin - being that her name was listed in the report.

Generally, in order to establish a prima facie case of failure to promote under Title VII, a plaintiff must show that (1) she is a member of a protected group, (2) she sought or applied for a position for which she was qualified, (3) she was rejected, and (4) thereafter the employer promoted or continued to seek other candidates not in the protected group. *Grimes v. Texas Dep't of Mental Health & Mental Retardation*, 10 F.3d 137, 140 (5th Cir. 1996). James M. Cooley's affidavit asserts that Boykin cannot meet this required showing because

> [s]he cannot show that she applied for the position and was qualified for the job, she cannot show that she was rejected, and she cannot show that the position remained open and that EOI continued to seek applications from other individuals of complainant's qualifications.

But as has already been stated, "[t]he prima facie case is a flexible standard that may be modified to relate to different factual situations." See *Dupont-Lauren*, 994 F. Supp. At 819. The facts surrounding Boykin's failure to promote claim present the classic example of when a formalistic prima facie standard is unworkable and in need of modification.

As to Defendant's challenge of Boykin' prima facie showing, it is significant to point out that in evaluating the prima facie case, courts have

excused an employee's failure to apply for a position in a variety of situations. *Dupont-Lauren*, 9994 F. Supp. at 818 (citing as an example, *Chambers v. Wynne Sch. Dist.*, 909 F.2d 1214, 1217 (8th Cir. 1990) (failure to apply formally will be excused if Plaintiff makes every reasonable attempt to convey interest in job to employer)). One of these situations is where a vacant position was not posted. Id. Under those circumstances, the plaintiff must show that there was an available position and that she expressed some interest in a promotion or that the employer had some reason or duty to consider her for the post. Id. (*Citing Carmichael v. Birmingham Saw Works*, 738 F.2d 1126, 1133 (11th Cir. 1984)), where, as in the case at bar, the employer had no formal procedures for posting notices of available promotions but rather relied on "word of mouth" and informal review procedures).

> [W]hen there is no formal notice of the job's availability, the plaintiff may have no means, within his own knowledge, of showing whether the employer considered him or not.

Furthermore,

> when an employer uses such informal methods it has a duty to consider all those who might reasonably be interested, as well as those who have learned of the job opening and expressed an interest.

Carmichael, 738 F.2d at 1133.

Defendant posted some positions for application and merely placed employees in positions (promotions) with no opportunity to apply.

On these facts, it is inappropriate to hold Appellant to the traditional prima facie requirements of application, rejection and the like.

In James M. Cooley's affidavit, when addressing the promotion claim, defendant asserts the fact that Ms. Boykin did not apply for the position of Site Administrative Program Coordinator. However, Defendant never indicates in any way that Ms. Boykin was unqualified for this position.

As to Karen Rucker's promotions, the defendant's use of terms such as "known to be compatible with the person she would be working for" involve the types of purely subjective explanations that have long been disfavored by the court. See *Conner v. Fort Gordon Bus Co.*, 761 F.2d

1495, 1499 (5th Cir. 1985) ("a defendant relying on a purely subjective reason for discharge will face a heavier burden of production than it otherwise would"). Appellant assumed the position of Site Administrative Programs Coordinator was a professional position not a personal position that rewards personal friendships.

The Fifth Circuit has held that "[i]t is not legally sufficient or legitimate for an employer to reject an employee who does not have notice or an opportunity to apply for a promotion." See *Bernard v. Gulf Oil Corp.*, 841 F.2d 547, 570 (5th Cir. 1988). In reaching this conclusion, the Fifth Circuit cited Carmichael, the Eleventh Circuit case referenced supra wherein that court stated that the lack of formal notification of available promotions "can lead to racial discrimination, both because important information may be available only to whites and because such procedures place no check on individual biases." See *Carmichael*, 738 F.2d at 1133. *Carmichael* went on to hold that an "employer cannot avoid a Title VII violation by showing that it incorrectly assumed that the plaintiff was uninterested in the job. When the plaintiff had ... no opportunity to apply for the job, such a reason for rejection is legally insufficient and illegitimate." Id. At 1133-34. The court concluded that it is a disputable question of fact whether the defendant had any reason to think the plaintiff was interested in [the] job.... [T]he [trial] court should consider the possibility that the defendant assume [plaintiff] would not be interested in [the job] because he is black. There is no discernible reason why the defendant should have considered [the individual who was promoted] but not the plaintiff. Id. at 1134.

As in Bernard and Carmichael, defendant here would have the court deem "legitimate" its failure to promote a black female employee who was never considered for the position. The defendant did not articulate with sufficient specificity a legitimate nondiscriminatory reason for its promotion decision.

The Appellant established discriminatory pay claim. Jeff Braswell, Depo. Pp. 58-59, shows that the secretarial positions are the higher paid positions, although the clerical positions perform the same duties. The secretarial positions are primarily held by whites and the clerical positions are primarily held by blacks. Pay raises for whites are generally higher than the merit pay raises for blacks. Ron Husbands, EOI, testified that the merit pay increases are arbitrarily and subjectively determined by the managers and supervisors. Husbands testified that Entergy does not have any objective standards on

merit pay increases. Salary increases based on subjective determinations and procedures are inherently suspect. See, *Pittman v. Hattiesburg Municipal Separate School District*, 644 F. 2d 1071, 1074 (5th Cir. 1981); *Uviedo v. Steves Sash & Door Co.*, 738 F. 2d 1425, 1431 (5th Cir. 1984), cert. denied, 474 U. S. 1054, 106 S. Ct. 791, 88 L. Ed. 2d 769 (1986). "Elusive, purely subjective standards must give way to objectivity if statistical indicia of discrimination are to be refuted." *Brown v. Gaston County Dyeing Machine Company*, 457 F. 2d 1377, 1382 (4th Cir. 1972). The lack of objective guidelines is a badge of discrimination. *Brown v. Gaston County Dyeing Machine Company*, supra, at 1383. To establish a prima facie case of wage discrimination, a plaintiff must prove that "(1) [he] is a member of a protected class, and (2) that [he] is paid less than a nonmember for work requiring substantially the same responsibility." Id. Appellant has established that she is black, and that she performs substantially the same responsibility as the white secretaries yet receive less pay than the white secretaries. The Appellee's vague assertions that pay is based on background, skills and subjective evaluations by supervisors and managers is not enough to rebut Appellant's prima facie pay discrimination claim. See, *Lees v. The Case-Hoyt Corp.*, 779 F. Supp. 717, 725 (W. D. N. Y. 1991). In *Lees*, supra, at 725, the Court held that:

> [d]efendant has offered nothing to show that plaintiff's salary was tied to an unsatisfactory job performance or some other identifiable factor. Without such evidence produced plaintiff's prima facie case of wage discrimination stands unrebutted. Consequently, defendant's motion for summary judgment with respect to the claim of wage discrimination is denied.

Appellee's EEO Report shows Boykin with more seniority, experience, and unfair wages compared to whites with less seniority and experience at Grand Gulf.

The Appellant experienced discriminatory work environment. Exhibits attached to Appellant's Response to the Appellee's Summary Judgment Motion show that 56 blacks and 10 whites work in clerical positions for Entergy (including at Grand Gulf), four black and four white secretaries, 25 black and six white laborers, six black and 53 white mechanics, four black and 89 white electricians, three black and 84 white operators, three black and 76 white technical specialists, 37 black and 637 white professionals, six black and 30 white supervisors, one black and 15 white superintendents, and no black and eight white managers. This

evidence shows blacks are concentrated in the unskilled and minimally skilled jobs whereas whites are in the professional and skilled jobs at Entergy. "When job classifications are as segregated as they are in this company", it is an indication of discrimination. *Brown v. Gaston County Dyeing Machine Co.*, supra, at 1383.

Boykin is one of the 56 black employees that has remained in the low-paying clerical position, while white employees have been promoted to other positions.

Prima facie case was established in the lower court. The prima facie elements of a claim for disparate treatment are: (1) that the plaintiff is a member of a protected class under the statute; (2) that he applied and was qualified for a job or promotion for which his employer was seeking applicants; (3) that, despite his qualifications, he was rejected; (4) that afterwards the position remained open and the employer continued to look for candidates with plaintiff's qualifications. (*See McDonnel Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).*

Boykin (1) is a member of a protected class (African American), (2) Boykin did apply for the position of Senior Secretary, (3) despite her qualifications, she was rejected and a white applicant was chosen, (4) afterwards the position remained open and the employee continued to look for candidates with Boykin's qualifications. This disparate treatment was repeated when Boykin applied for the positions of Production Aide, Proofreader, Senior Information Specialist.

During the deposition of Jeff Braswell it was confirmed by counsel and lower court that plaintiff is entitled to maintain and seek discovery for discriminatory statutory (§1981) violations which the company enforced that occurred "as a result of a continuing policy, itself illegal..." *See Perez v. Laredo Junior College, 706 F. 2d 731, 734 (5th Cir. 1983), cert. denied 464 U. S. 1042, 104 S. Ct. 708, 79 L. Ed. 2d 172.* Furthermore, the continuing violations theory applies to discriminatory placements as well as denials of promotions. *Williams v. Owens-Illinois, Inc., Ct. 302, 74 L. Ed. 2d 282.*

The affidavit of James M. Cooley was inaccurate. James M. Cooley listed merit increases for Appellant from 1991 to 1996 yet showed no merit increases of whites in comparison to Appellant for the same time periods

when actuality, whites received more money in merit increases than blacks. With Appellant's seniority, education, experience and exemplary performance, merit increases and promotions should far exceed that of whites in similar positions, particularly those mentioned in the sworn affidavit of James M. Cooley.

James M. Cooley swore in his affidavit that he has knowledge of human resource activities at Grand Gulf and Donald Hintz was never involved in any of the individual pay or promotion decisions regarding appellant, yet payroll authorizations were submitted to the president for approval.

James M. Cooley swore in his affidavit non-exempt employees were not ranked. In fact, non-exempt employees were ranked.

Clerical title changes were common and happened often, mostly with no increase in pay but sometimes were executed in conjunction with an annual merit increase. This action removed any opportunities and stagnated viable pay increases by removing Appellant's seniority from the equation of career advancement and progression. John J. Farren, a Human Resources Director, testified in the deposition of Ellen Watts that the determination by managers of salary recommendations to the human resources department was arbitrary. He testified:

Q. So if those salaries have been discriminatorily determined prior to 1992, then the same discriminatory salary would have been encoded into the electronic personnel file in 1992?

A. The same salary-

Q. Same salary.

A. -that it had before would be-

(WITNESS NODDING HEAD).

[Dep. Of John J. Farren, pp. 68-69]

In short, Appellant was paid less money, as a starting salary with EOI, than whites who were hired in similar positions although she had more education and clerical experience.

James M. Cooley swore in his affidavit that the majority of EOI's performance appraisal forms calls for objective evaluations as to the employee's performance. To the contrary, Ron Husbands testified that the merit pay increases are arbitrarily and subjectively determined by the managers and supervisors. He testified that Entergy does not have any

objective standards on merit pay increases. Salary increases based on subjective determinations and procedures are inherently suspect. See, *Pittman v. Hattiesburg Municipal Separate School District*, 633 F 2d 1071, 1074 (5th Cir. 1981); *Uviedo v. Steves Sash & Door Co.*, 738 F. 2d 1425, 1431 (5th Cir. 1984), cert. denied, 474 U. S. 1054, 106 S. Ct. 791, 88 L. Ed. 2d 769 (1986). "Elusive, purely subjective standards must give way to objectivity if statistical indicia of discrimination are to be refuted." *Brown v. Gaston County Dyeing Machine Company*, 457 F. 2d 1377, 1382 (4th Cir. 1972). The lack of objective guidelines is a badge of discrimination. *Brown v. Gaston County Dyeing Machine Co.*, supra, at 1382.

II

THE PETITION SHOULD BE GRANTED BECAUSE THE UNITED STATES COURT OF APPEALS VIOLATED THE PETITIONER'S CONSTITUTIONAL RIGHTS BY DENYING TRIAL BY JURY AS PROVIDED IN THE SEVENTH AMENDMENT OF THE UNITED STATES CONSITUTION.

The Appellee cites many case laws but presents no pro-offered reason for Appellant's disparate wages and promotions in comparison to white employees. The Appellant's employment records, along with the employee(s) that have been promoted were presented to the district court. The district court chose to ignore these records which would have clearly shown that the Appellant was more qualified than the white employees who were paid more and promoted ahead of Appellant. The Appellant included in her case depositions as to Appellant's qualifications. The Appellant included as evidence statistics as to the Entergy's refusal to promote Appellant and in this case conformed to a general pattern of discrimination against African Americans. The district judge chose to ignore all of the evidence which was presented. Although the Appellee' s statistics were not sufficient to demonstrate conclusively that its actions were not discriminately motivated, the district court did not consider the racial mix of the work force when making their determination as to motivation and the court of appeals should give consideration to such proof in further proceedings. *Furnco Construction v Waters, 438 U.S. 567 (1978) p. 579-580.*

The Appellant has introduced evidence from the personnel director at Entergy who confirms the subjective rather than objective criterion which has little weight in rebutting charges of discrimination. The Appellee did little to present non-discriminating reasons for its actions. It can be discerned that because no legitimate reasons were offered for Appellant's rejection for promotion and less wages by Appellee, there was some reason, based on Appellee's decision on impermissible considerations such as race.

This case should not have been dismissed by the lower court. The Appellant to survive the Appellee's motion, need only present evidence from which a jury might return a verdict in favor of Appellant. If Appellant does so there is a genuine issue of fact that requires a trial.

The district court disregarded critical evidence favorable to the Appellant - namely the evidence supporting Appellant's prima facie case and disregarding Appellee's almost lack of explanation of why white employees were promoted over Appellant, who is black.

"[i]t is true that the issue of material fact required by Rule 56(c) to be present to entitle a party to proceed to [477 US. 242, 249] trial is not required to be resolved conclusively in favor of the party asserting its existence; rather, all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." 391 U.S., at 288-289.

The holding that the clear-and-convincing standard of proof should be taken into account in ruling on summary judgment motions does not denigrate the role of the jury. It by no means authorizes trial on affidavits. Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Adickes, 398 U.S., at 158-159.* Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case where there is reason to believe that the better course would be to proceed to a full trial. *Kennedy v. Silas Mason Co., 334 U.S. 249 (1948).*

The trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." *Wright v. West, 505 U.S. 277, 296 (1992)*; see also *Wilson v. United States, 162 U.S. 613, 620-621 (1896)*; 2 J. Wigmore, Evidence 278(2), p. 133 (j. Chadbourn rev. ed. 1979). Moreover, once the employer's justification has been eliminated, discrimination may well be the most likely alternative explanation, especially since the employer is in the best position to put forth the actual reason for its decision. Cf. *Furnco Constr. Corp. v. Waters, 438 U.S. 567, 177 (1978)*.

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate interferences from the facts are jury functions, not those of a judge." *Liberty Lobby, supra, at 255*. Thus although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. See Wright & Miller 299. That is, the court should give credence to the evidence favoring the nonmovant as well as that "evidence supporting the moving party that is uncontradicted and un-impeached, at least to the extent that evidence comes from disinterested witnesses." Id., at 300.

In the suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be otherwise re-examined in any court of the United States, than according to the rule of the common law.

The framers of the Constitution considered the right to jury trial extremely important. In the Sixth Amendment, they provided for jury trials in criminal cases. In the Seventh Amendment, they provided for such trials in civil suits where the amount contested exceeds $20. The amendment applies to federal courts and state institutions also call for jury trials in civil cases.

Traditionally, the Supreme Court has treated the Seventh Amendment as preserving the right of trial by jury in civil cases as it "existed under the English common law when the amendment was adopted." The right was to "a trial by a jury of twelve men, in the presence and under the superintendence of a judge empowered to instruct them on the law and to

advise them on the facts and (except in acquittal of a criminal charge) to set aside their verdict if in his opinion it is against the law or the evidence."

The Amendment has for its primary purpose the preservation of "the common law distinction between the province of the court and that of the jury, whereby, in the absence of express or implied consent to the contrary, issues of law are resolved by the court and issues of fact are to be determined by the jury under appropriate instructions by the court."

As in Rule 50 of Federal Rule of Civil Procedures cited in Reeves, v. Sanderson No. 99-536, the court should review all evidence in the record.

The court seemingly disallowed before-stated evidence and granted summary judgment. The Court of Appeals as well as the District Court impermissibly substituted its judgment weighed on other factors, instead of the facts, as furnished to the courts.

CONCLUSION

The Court should intervene in this case before a precedent is established by the Court of Appeals. The precedent is to the extreme as it compares with other Courts of Appeals and should be moderated by this Court.

Betty Boykin is a forty-three year old black female who earned a two year degree from Vicksburg Business College in 1978. Ms. Boykin became employed by Bechtel Corporation at Grand Gulf Nuclear Station in Port Gibson, Mississippi in 1979 as a clerk to work for EOI (then Mississippi Power and Light Company). Mississippi Power and Light Company is a wholly owned subsidiary of EOI. Ms. Boykin is currently classified as a Specialist IV. Her job title has changed over the years, her job duties and responsibilities have not. Essentially she is currently holding the same position at EOI she was initially hired in.

Because of repeated rejection by EOI when Boykin applied for promotions, it is evident that the impetus for the defendant's actions was their collective racial animus.

The Defendant uses many subjective reasons such as, 'comfortable with', 'easy to work with', etc. as a pretext for non-discrimination. There is no evidence of objective rationale. There is no substance.

The district court erred in not citing defendant for failing to submit records of plaintiff. James M. Cooley's affidavit indicates that it is predicated on a review of documents in Ms. Boykin's personnel file. The defendants did not disclose those documents to the plaintiff in pre-discovery disclosure or at any time during this litigation.

The Court of Appeals and the District Court have consistently evaded the evidence of discrimination and retaliation experienced in the work place especially when race is under consideration The petitioner was denied equal protection under the law.

The Court of Appeals consistently ignores Title VII complaints when race is an issue.

This court should enforce the provisions of Title VII and the Seventh Amendment of the United States Constitution.

Respectfully submitted,

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DATE: 1/8/01

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 00-60346
Summary Calendar

BETTY BOYKIN, Plaintiff-Appellant,

versus

ENTERGY OPERATIONS, INC.;
DON HINTZ; MIKE BAKARICH;
JOSEPH HAGAN; and MARY SEE,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
5:99-CV-60-BN

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Appellant Betty Boykin appeals from an adverse summary judgment dismissing her claims stemming from her allegations before the district court that she was denied a promotion on the basis of race, that she was paid disparate wages on the basis of race and that she suffered racially discriminatory working conditions due to her employer's creation of "white

* Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

and black jobs."

Our *de novo* review of the summary judgment evidence and the record before us convinces us that the district court correctly dismissed the appellant's claims. The district court carefully considered appellant's claims and its order dated March 2, 2000, cogently and meticulously addressed her claims and provided a correct analysis and conclusion as to each of her claims. We affirm essentially for the reasons set forth by Judge Barbour in his order of March 2, 2000.

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

BETTY BOYKIN — **PLAINTIFF**

VS. — **CIVIL ACTION NO. 5 : 99CV60BN**

ENTERGY OPERATIONS, INC.,
DON HINTZ, MIKE BAKARICH,
JOSEPH HAGAN, AND MARY SEE — **DEFENDANTS**

FINAL JUDGMENT

In accordance with the Opinion and Order entered this day granting the motion of defendants for summary judgment, Plaintiff's claims are all hereby dismissed with prejudice.

SO ORDERED this the 2nd day of March, 2000.

William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE